

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	§	Chapter 11
	§	
EVANGELICAL RETIREMENT	§	Case No. 23-07541
HOMES OF GREATER CHICAGO,	§	
INCORPORATED d/b/a FRIENDSHIP	§	
VILLAGE OF SCHAUMBURG,	§	
	§	
FEIN: 36-2815382,	§	
	§	
Debtor.	§	Hon. Timothy A. Barnes

**NOTICE OF DEBTOR'S MOTION FOR AN ORDER APPROVING
THE POST-CLOSING CONSULTING AGREEMENT**

TO: See Attached Service List

PLEASE TAKE FURTHER NOTICE that on **Wednesday, January 31, 2024, at 10:00 a.m. (CT)**, I will appear before the **Honorable Timothy A. Barnes**, or any judge sitting in that judge's place, **either** in courtroom 744 of the Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street, Chicago, IL 60604, **or** electronically as described below, and present the *Debtor's Motion for an Order Approving the Post-Closing Consulting Agreement*, a copy of which is attached.

Important: Only parties and their counsel may appear for presentment of the Motion electronically using Zoom for Government. All others must appear in person.

To appear by video, use this link: <http://www.zoom.com/>. Then enter the meeting ID and passcode.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and passcode.

Meeting ID and passcode. Meeting ID and passcode. The meeting ID for this hearing is 161 329 5276, and the passcode is 433658. The meeting ID and passcode can also be found on the judge's page on the court's web site.

If you object to this Motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the Motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the Motion in advance without calling it.

Dated: January 23, 2024

/s/ *Trinitee Green*

POLSINELLI PC

Trinitee G. Green (ARDC # 6323508)

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-and-

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Counsel to the Debtor and Debtor in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
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In re:

EVANGELICAL RETIREMENT
HOMES OF GREATER CHICAGO,
INCORPORATED d/b/a FRIENDSHIP
VILLAGE OF SCHAUMBURG,

FEIN: 36-2815382

Debtor.

Chapter 11

Case No. 23-07541

CERTIFICATE OF SERVICE

I, Sabrina G. Tu, depose and say that I am employed by Stretto, the claims and noticing agent for the Debtor in the above-captioned case.

On or before 5:00 p.m. (prevailing Pacific Time) on January 23, 2024, at my direction and under my supervision, employees of Stretto will cause to be served a complete and accurate copy of the attached Notice of Motion and the document referred to therein to be made on the parties on the service list attached hereto as **Exhibit A** and parties listed on the Resident List via first-class mail, and via electronic mail where available as set forth on **Exhibit B**.

Dated: January 23, 2024

/s/ Sabrina G. Tu

Sabrina G. Tu

STRETTO

410 Exchange, Suite 100

Irvine, CA 92602

Telephone: 855.886.6266

Email: TeamFVS@Stretto.com

Exhibit A

**Exhibit A**

Served Via First-Class Mail

Name	Attention	Address 1	Address 2	Address 3	City	State	Zip
Cook County of Illinois	Attn Officer/Director or Legal Dept; Treasurer's Office	118 North Clark Street	Room 112		Chicago	IL	60602
Environmental Protection Agency		1200 Pennsylvania Ave. NW			Washington	DC	20460
Evangelical Retirement Homes of Greater Chicago, Incorporated d/b/a Friendship Village of Schaumburg	c/o Polsinelli PC	Attn: Trinitee G. Green	150 N Riverside Plaza	Suite 3000	Chicago	IL	60606
Friendship Senior Options, NFP, an Illinois not-for- profit corporation	c/o Cooley LLP	Attn: Eric E. Walker	110 N. Wacker		Chicago	IL	60606
IL CCRC LLC	c/o Cozen O'Connor	Attn: Brian L. Shaw	123 North Wacker Drive	Suite 1800	Chicago	IL	60606
Illinois Department of Financial and Professional Regulation	Attn Officer/Director or Legal Dept	555 West Monroe Street	5th Floor		Chicago	IL	60661
Illinois Department of Human Services	Attn Officer/Director or Legal Dept	401 South Clinton Street			Chicago	IL	60607
Illinois Department of Public Health	Att. Director	69 Washington Street	35th Floor		Chicago	IL	60602
Illinois Department of Public Health	Attn Officer/Director or Legal Dept	122 S. Michigan Avenue	7th and 20th Floors		Chicago	IL	60603
Illinois Department of Public Health	c/o Office of the Illinois Attorney General	Attn: John P. Reding	100 West Randolph St	Suite 13-225	Chicago	IL	60601
Illinois Department of Revenue	Bankruptcy Unit	PO Box 19037			Springfield	IL	62794-9037
Illinois Department of Revenue	David Harris - Director	555 West Monroe Street	Suite 1100		Chicago	IL	60661
Illinois EPA Headquarters		1021 North Grand Avenue East	P.O. Box 19276		Springfield	IL	62794-9276
Illinois Finance Authority	Attn Officer/Director or Legal Dept	160 N. LaSalle St., Suite S-1000			Chicago	IL	60601
Illinois Finance Authority	c/o ArentFox Schiff LLP	Attn: Joseph Mark Fisher	233 S Wacker Drive	Suite 7100	Chicago	IL	60606
Internal Revenue Service	Attn. Centralized Insolvency Operation	P.O. Box 7346			Philadelphia	PA	19101
LEAF Capital Funding, LLC	c/o Dressler Peters LLC	101 W. Grand Ave	Suite 404		Chicago	IL	60654
Office of the United States Trustee	Jeffrey L. Gansberg	219 S. Dearborn Street	Room 873		Chicago	IL	60604
Office of the United States Trustee	Jeffrey L. Gansberg	227 W Monroe St	Ste 3350		Chicago	IL	60606
Official Unsecured Creditors' Committee	c/o Crane, Simon, Clar & Goodman	Attn: Scott R. Clar, Karen R. Goodman	135 S LaSalle	#3950	Chicago	IL	60603
Riehle Developments, LLC	c/o Huck Bouma PC	Attn: Eric J. Malnar	1755 South Naperville Rd		Wheaton	IL	60189
Schaumburg Bank & Trust Company N.A.	Teresa Faidley	1180 E. Higgins Rd.			Schaumburg	IL	60173
Schaumburg Bank & Trust Company, N.A.	c/o Chuhak & Tecson, P.C.	Attn: Brandon R. Freud	120 S. Riverside Plz	Suite 1700	Chicago	IL	60606-7512
Securities & Exchange Commission		100 F Street NE			Washington	DC	20549-0213
Securities & Exchange Commission		175 W Jackson Boulevard	Suite 1450		Chicago	IL	60604
The U.S. Department of Health & Human Services	Attn Officer/Director or Legal Dept	200 Independence Avenue, S.W.			Washington	DC	20201
U.S. Centers for Medicare & Medicaid Services	Attn Officer/Director or Legal Dept	7500 Security Blvd			Baltimore	MD	21244
U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services	Attn: David H. DeCelles	219 South Dearborn Street			Chicago	IL	60604
UMB Bank	Attn: Jay Smith & Irina Palchuk	2 South Broadway			St. Louis	MO	63102
UMB Bank, N.A., as Bond Trustee and Master Trustee	c/o Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.	Attn: Daniel S. Bleck, Tim McKeon	1 Financial Center		Boston	MA	02111-0000
UMB Bank, N.A., as Bond Trustee and Master Trustee	c/o Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.	Attn: Megan Preusker, Daniel S. Bleck, Timothy J. McKeon	919 3rd Ave		New York	NY	10022
United States Attorney's Office Northern District of Illinois, Eastern Division	Attn Officer/Director or Legal Dept.	219 S. Dearborn Street	5th Floor		Chicago	IL	60604
Verdant Comm Cap Titling Trust	Attn: Officer/Director or Legal Dept	12301 Whitewater Drive, Ste. 80			Minnetonka	MN	55343
Wells Fargo Bank, National Association, as Master Trustee	Attn Officer/Director or Legal Dept	230 W. Monroe Steet	Suite 2900		Chicago	IL	60606
Wells Fargo Bank, National Association, as Master Trustee	Attn: Corbin B Connell	600 S. 4th Street, 6th Floor	MAC N9300-061		Minneapolis	MN	55479



Exhibit A

Served Via First-Class Mail

Name	Attention	Address 1	Address 2	Address 3	City	State	Zip
Wells Fargo Bank, National Association, as Mortgagee	Attn Officer/Director or Legal Dept	230 W. Monroe Steet	Suite 2900		Chicago	IL	60606

Exhibit B



Exhibit B

Served Via Electronic Mail

Name	Attention	Email
Cook County of Illinois	Attn Officer/Director or Legal Dept; Treasurer's Office	lbankruptcy@cookcountytreasurer.com
Evangelical Retirement Homes of Greater Chicago, Incorporated d/b/a Friendship Village of Schaumburg	c/o Polsinelli PC	tggreen@polsinelli.com
Friendship Senior Options, NFP, an Illinois not-for-profit corporation	c/o Cooley LLP	ewalker@cooley.com
IL CCRC LLC	c/o Cozen O'Connor	bshaw@cozen.com
Illinois Department of Public Health	c/o Office of the Illinois Attorney General	john.reding@ilag.gov
Illinois Finance Authority	c/o ArentFox Schiff LLP	mark.fisher@afslaw.com
LEAF Capital Funding, LLC	c/o Dressler Peters LLC	kpeters@dresslerpeters.com
Office of the United States Trustee	Jeffrey L. Gansberg	jeffrey.l.gansberg@usdoj.gov
Official Unsecured Creditors' Committee	c/o Crane, Simon, Clar & Goodman	sclar@cranesimon.com
Riehle Developments, LLC	c/o Huck Bouma PC	kgoodman@cranesimon.com
Schaumburg Bank & Trust Company, N.A.	c/o Chuhak & Tecson, P.C.	emalnar@huckbouma.com
Securities & Exchange Commission		bfreud@chuhak.com
U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services	Attn: David H. DeCelles	chicago@sec.gov
UMB Bank	Attn: Jay Smith & Irina Palchuk	david.decelles@usdoj.gov
UMB Bank, N.A., as Bond Trustee and Master Trustee	c/o Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.	jay.smith@umb.com
		irina.palchuk@umb.com
		mpreusker@mintz.com
		dsbleck@mintz.com
		tjmckeon@mintz.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	§	Chapter 11
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EVANGELICAL RETIREMENT	§	Case No. 23-07541
HOMES OF GREATER CHICAGO,	§	
INCORPORATED d/b/a FRIENDSHIP	§	
VILLAGE OF SCHAUMBURG,	§	
	§	
FEIN: 36-2815382,	§	
	§	
Debtor.	§	Hon. Timothy A. Barnes

**DEBTOR’S MOTION FOR AN ORDER APPROVING THE
POST-CLOSING CONSULTING AGREEMENT**

The debtor and debtor-in-possession (the “**Debtor**”) in the above-captioned case (the “**Chapter 11 Case**”) hereby moves (this “**Motion**”) for entry of an order, substantially in the form of **Exhibit A** attached hereto (the “**Proposed Order**”), pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), approving the Post-Closing Consulting Agreement (the “**Transition Agreement**”) between the Debtor and IL CCRC LLC (the “**New Operator**”) on the terms set forth herein and more particularly in the Transition Agreement, a copy of which is attached as **Exhibit 1** to the Proposed Order.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).
2. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are sections 105(a) and 363 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

4. On June 9, 2023 (the “**Petition Date**”), the Debtor commenced this Chapter 11 Case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code

5. The factual background regarding the Debtor, including business operations, capital and debt structure, and the events leading to the filing of the Chapter 11 Case is set forth in the *Declaration of Mike Flynn, Chief Executive Officer of the Debtor in Support of the Debtor’s First Day Pleadings* [Docket No. 16] (the “**First Day Declaration**”) and incorporated herein by reference.

6. The Debtor continues to operate and manage its business as a debtor in possession pursuant to Bankruptcy Code sections 1107 and 1108.

7. On June 23, 2023, the Office of the U.S. Trustee appointed an official committee of unsecured creditors in this Chapter 11 Case.

8. On November 22, 2023, the Bankruptcy Court entered the *Order (A) Approving Asset Purchase Agreement Between the Debtor and the Successful Bidder; (B) Authorizing the Sale of Substantially all of the Debtor’s Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (C) Authorizing the Assumption and Assignment of Designated Contracts; and (D) Granting Related Relief* [Docket No. 365] (the “**Sale Order**”) approving the sale of substantially all of the Debtor’s assets to the New Operator on the terms set forth in the Asset Purchase Agreement (the “**APA**”).

9. Among other things, the APA contemplates certain post-closing agreements between the Debtor and the New Operator. For instance, Article 5.6(f) of the APA requires the Debtor to deliver to the New Operator “a customary Operations Transfer Agreement consistent herewith to the extent reasonably necessary, duly executed by [Debtor].” APA, at § 5.6. Likewise, Article 5.5(c) of the APA requires the same of the New Operator. *Id.* at § 5.5.

RELIEF REQUESTED

10. By this Motion, pursuant to Bankruptcy Code sections 105(a) and 363, the Debtor requests entry of an order in substantially similar form to the Proposed Order, approving the Transition Agreement on the terms set forth therein and granting such additional relief as the Court deems just.

BASIS FOR RELIEF REQUESTED

11. Although the Transition Agreement has been pre-approved by the Sale Order that approves the APA, the Debtor files this Motion out of an abundance of caution to provide notice to parties in interest that the Debtor's estate will incur minimal costs associated with the transition of its business to the New Operator. Under the Transition Agreement, Consultants, who are former employees of the Debtor and current employees of the New Operator, will provide certain transitional services to the Debtor. In exchange, the parties have agreed that the New Operator will receive compensation as set forth in Section 3 of the Transition Agreement. The Debtor estimates that the total compensation to be paid under the Transition Agreement will be approximately \$25,000.

12. Bankruptcy Code section 363(b)(1) provides that a debtor, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The Debtor will need to make payments pursuant to the Transition Agreement, which will require the Debtor to use certain cash collateral and/or other property of the estate. To the extent the Transition Agreement and the services to be provided thereunder are outside the ordinary course of business, the Debtor has a sound business purpose for entering into the agreement and making payments in accordance with its terms. In addition, Bankruptcy Code section 105(a) provides that the bankruptcy courts "may issue any order necessary or appropriate

to carry out the provisions of” the Bankruptcy Code. 11 U.S.C. § 105(a). Thus, sections 363 and 105 provide the bases for the relief requested herein.

13. “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also In re S.N.A. Nut Co.*, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) (“The business judgment rule ‘is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was in the best interests of the company.’”); *In re Filene’s Basement, LLC*, No. 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) (“If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate.”). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under Bankruptcy Code section 363(b)(1). *See United Retired Pilots Benefit Prot. Assoc. v. United Airlines, Inc. (In re UAL Corp.)*, 443 F.3d 565, 571 (7th Cir. 2006) (criteria for approving transaction under 363(b)(1) is “whether the transaction makes good business sense . . .”). Indeed, when applying the business judgment standard, courts show great deference to a debtor’s business decisions. *See Pitt v. First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.)*, 1989 WL 106838, at *3 (N.D. Ill. 1989) (“Under this test, the debtor’s business judgment . . . must be accorded

deference unless shown that the bankrupt's decision was taken in bad faith or in gross abuse of the bankrupt's retained discretion.").

14. Here, a sound business purpose exists to grant the Motion pursuant to Bankruptcy Code sections 105 and 363. The APA contemplates that both the Debtor and the New Operator would enter into a "customary Operations Transfer Agreement." Further, the terms set forth in the Transition Agreement are fair and reasonable with the Debtor agreeing to pay the New Operator an hourly rate of \$65 in exchange for the services provided by the Consultants (as set forth and/or defined in the Transition Agreement). The services to be provided by the Consultants will include, without limitation, (i) assistance with billing and collections of accounts receivable; (ii) assistance with filing tax returns, financial reporting, and cost reports; (iii) assistance with the daily operations and winddown of the Debtor; (iv) Mike Flynn's agreement to act as the leased interim CEO of the Debtor; and (v) assistance with Debtor operations following the sale to the New Operator.

15. Finally, the Debtor requests that the Transition Agreement be approved with an effective date of December 28, 2023, which was the date of the closing of the sale of substantially all the Debtor's assets to the New Operator. *See* Docket No. 441.

NOTICE

16. Notice of this Motion has been or will be provided to: (i) the United States Trustee for the Northern District of Illinois; (ii) the United States Attorney for the Northern District of Illinois; (iii) counsel for the Bond Trustee; (iv) the Debtor's secured creditors, if any; (v) the Internal Revenue Service; (vi) the Illinois Department of Revenue; (vii) the United States Department of Health and Human Services; (viii) the Illinois Department of Human Services; (ix) the Illinois Finance Authority; (x) the Centers for Medicare and Medicaid Services; (xi) the Illinois Department of Financial and Professional Regulation; (xii) the Illinois Department of Public

Health; (xiii) the holders of the twenty (20) largest unsecured claims against the Debtor; (xiv) parties on the 2002 List; and (xv) the New Operator.

NO PRIOR REQUEST

17. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

Dated: January 23, 2024
Chicago, Illinois

/s/ Trinitee G. Green
Trinitee G. Green (ARDC # 6323508)
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150 N. Riverside Plaza, Suite 3000
Chicago, IL 60606
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and Debtor in Possession*